IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

SATURDAY, THE 1ST DECEMBER 2007 / 10TH AGRAHAYANA 1929

Crl.MC.No. 3311 of 2007()

C.C. NO.569/2002 OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT-II, ERNAKULAM.

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PETITIONER: 2ND ACCUSED

SHEELA ANTONY, AGED 44,
W/O.JOHNY THOMAS, PATTUPARAMBIL HOUSE,
ETTUKARRU TEMPLE ROAD, ELAMAKARA,
ERNAKULAM DISTRICT.

BY ADV. SRI.SHAJI CHIRAYATH

RESPONDENTS: COMPLAINANT & STATE
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1. **T.T.MATHEW, S/O.THOMAS, KATHRIKADAVU DESOM, ELAMKULAM VILLAGE, KANAYANNOOR TALUK, ERNAKULAM DISTRICT.**

2. **STATE OF KERALA,**
REP. BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR SRI.M.S.BREEZE

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 01/12/2007,ALONG WITH CRMC.3312/07, CRMC 676/07 THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.Nos.3311,3312 & 676 of 2007

Dated this the 1st day of December 2007

O R D E R

These Criminal Miscellaneous Cases are filed by the second accused in C.C.Nos.146/02, 568/02 and 569/02 all pending before the Judicial First Class Magistrate Court-II, Ernakulam. All these are prosecutions under Section 138 of the Negotiable Instruments Act and they have all been initiated by the same complainant, that is the respondent herein.

2. Altogether there are two accused persons in these three prosecutions. The first accused in all the three cases is the husband of the common petitioner herein. The petitioner is the first accused.

3. The short contention raised by the learned counsel for the petitioner in all these three cases is that though she is the wife of the first accused, she is not the account holder nor is she a signatory to the cheques concerned. The learned counsel for the petitioner contends that under Section 138 of the Negotiable Instruments Act, the liability is only on the drawer of the cheque and the holder of the account in which the cheque is issued.

Inasmuch as the petitioner is neither the account holder nor a signatory to the cheque, the petitioner is not liable to face these prosecutions. The mere fact that the petitioner may also be liable to discharge the original liability, will not in any way make her answerable to a charge under Section 138 of the Negotiable Instruments Act, contends the learned counsel for the petitioner.

4. The learned counsel for the respondent, Sri.P.K.Mohammed fairly concedes that it is true that the petitioner herein, the second accused in all the three cases is neither the account holder nor the drawer of the cheques concerned. In these circumstances, the learned counsel fairly concedes that these prosecutions in so far as they relate to the petitioner/second accused, can be quashed invoking the powers under Section 482 Cr.P.C.

5. The request of the petitioner in these petitions is hence accepted. C.C.Nos. 146/02, 568/02 and 569/02 all pending before the Judicial First Class Magistrate Court-II, Ernakulam, in so far as they relate to the petitioner/second accused, are hereby quashed.

6. The learned counsel for the respondent/complainant submits that some errors have been committed in the production of the documents in these cases. There is an error in producing the documents. He prays that the respondent may be permitted to make appropriate applications to take back the cheque in one case and produce them in the other.

7. Appropriate application can be made before the learned Magistrate. The learned Magistrate must consider such application and pass appropriate orders.

(R.BASANT, JUDGE)

jsr

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007